

2024 House Judiciary Committee – Conferee Testimony Rules – Kathi Rakestraw 785-296-5805

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- Fill the information out in this cover letter. I use the information to be sure I have you listed properly as a conferee. Email a copy of this cover letter along with your testimony. This is so I can get the conferee added to the agenda. Please email the Cover Letter and Testimony as two separate documents. Any handouts can be posted on the website to be available during the meeting.
- I will need both documents as an electronic copy 24 business hours in advance of the hearing.
- Please use the following name convention:
HB2222.Name.date.Pro or Opp.(chose one). Example: HB1234.Tom Smith.1-13-23.Pro
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COMMITTEE TESTIMONY COVER LETTER

Please use this as a separate cover letter when submitting your PDF testimony.

BILL #: HB 2345

Date of Testimony: 1/17/2023

Person & Title for individual Testifying Laura Pederzani, Executive Director
If written testimony is on behalf of, please indicate.

Agency Represented: Arcare, Inc.

Phone Number: 913-951-3704

Your Email: laurap@arcare.org

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Please check one: Proponent Opponent Neutral

Please check one: Speaking Written Only

Please check one: In person at committee Virtually via Webex



**Proponent Testimony HB2345
House Committee on Judiciary
January 17, 2024**

Chair Humphries and members of the Committee:

Thank you for the opportunity to submit written testimony today. I am the Executive Director of Arcare, Inc. (Arcare), a certified 501(c)(3) organization. Arcare was founded in 1982 and designed to provide caring, planned, professional support for individuals with disability throughout their lives. Initially, the focus of Arcare was on developing full-service, long-term plans for each of its clients. Over time, the non-profit has added additional programs and core services tailored to meet each person's needs and each family's desires. Arcare serves individuals with all types of disabilities and is certified by the State of Kansas Department for Children and Families to act as a corporate guardian and/or conservator.

Our organization fully supports HB 2345, as we have seen firsthand the number of individuals and families who may have been pressured into an unnecessary guardianship or conservatorship instead of a less-restrictive alternative. According to a National Core Indicator Survey for Individuals with Intellectual and Developmental Disabilities, Kansas had nearly two times more guardianships than the national average. This Supported Decision-making Agreements Act will provide families with an opportunity to avoid unnecessary guardianships, while simultaneously providing legal protections to the principal and their supporters.

The concept of Supported Decision-making is not new. According to the American Bar Association (ABA), as of June 2023, 28 states and the District of Columbia have already adopted Supported Decision-making legislation. Passing HB 2345 would empower Kansas citizens with disabilities to be self-determined while reducing the number of guardianship cases in the courts and saving the state money.

It is important to note that professional organizations such as The National Guardianship Association (NGA) and the ABA have long been committed to advocating for guardianship standards and less restrictive alternatives to guardianship. The NGA Position Statement on Guardianship, Surrogate Decision Making, and Supported Decision Making states, "Guardianship should be utilized only when lesser restrictive supports are not available. Alternatives to guardianship, including supported decision making, should always be identified and considered whenever possible prior to the commencement of guardianship proceedings." The ABA has developed numerous resources for attorneys, including "Five Ways Lawyers Can Become Industry Thought Leaders by Advising on Alternatives to Guardianship," that Kansans can learn from and rely upon while implementing Supported Decision-making practices.

In addition, Supported Decision-making is not a replacement for Guardianship/Conservatorship, Powers of Attorney or other advance directives. It is simply a less-restrictive alternative that will allow the principal to engage in making decisions and stay independent for as long as possible.



We ask that you support HB 2345 and help provide Kansans with disabilities, their families, and professionals with the necessary tools to engage in less-restrictive alternatives to guardianship. Thank you.

Laura Pederzani

Laura Pederzani
Executive Director



**POSITION STATEMENT
ON
GUARDIANSHIP, SURROGATE DECISION MAKING, AND
SUPPORTED DECISION MAKING**

BACKGROUND:

Current trends in guardianship, nationally and internationally, are leading public policy makers, disability rights advocates, courts, guardians, and other guardianship stakeholders to consider supported decision making (SDM) as an alternative to guardianship and as a decision-making paradigm within the framework of future nationally recognized best practices for assisting persons with cognitive disabilities. The National Resource Center for Supported Decision Making describes supported decision making as:

...where people use trusted friends, family members, and professionals to help them understand the situations and choices they face, so they may make their own decisions - is a means for increasing self-determination by encouraging and empowering people to make their own decisions about their lives to the maximum extent possible.

The effectiveness of SDM as a widespread, viable alternative to guardianship is promising but it is still subject to much debate and research; however, the concepts behind it and the motivation to provide for a guardianship system and surrogate decision-making paradigms that move our society away from paternal protection of persons with cognitive disabilities to assistance for, and in partnership with, persons with cognitive disabilities are consistent with the direction of guardianship reform. The need to provide assistance when needed, prevent abuse and undue influence, and respect individual rights is recognized and generally accepted by all stakeholders.

The National Guardianship Association (NGA) has advocated for the use of person-centered decision making for years and has incorporated person-first language and person-centered decision making and planning concepts into the NGA Standards of Practice. NGA began advocating for the use of the "best interest" principle of decision making only as a last resort for surrogate decision making over two decades ago. Modern day respect for individual rights dictates that we must allow each individual to make or participate to the extent possible in personal decisions. Therefore, incorporation of SDM into guardianship standards is essential to evolving practice.

OUR POSITION:

The National Guardianship Association supports ongoing research to determine the effectiveness of supported decision-making models as alternatives to guardianship.

Guardianship should be utilized only when lesser restrictive supports are not available. Alternatives to guardianship, including supported decision making, should always be identified and considered whenever possible prior to the commencement of guardianship proceedings.

Whenever guardianship is necessary to assist a person, the guardianship must be limited, allow the maximum retention of individual rights, and be customized to the individual needs of the person under guardianship.

NGA supports policies that help maximize the participation of the person and provide the person under guardianship with every opportunity to exercise those individual rights that the person might be capable of exercising.

Under all circumstances, efforts should be made to encourage every person under guardianship to exercise his/her individual rights retained and participate, to the maximum extent of the person's abilities, in all decisions that affect him or her, to act on his or her own behalf in all matters in which the person is able to do so, and to develop or regain his or her own capacity to the maximum extent possible.

Supported decision making should be considered for the person before guardianship, and the supported decision-making process should be incorporated as a part of the guardianship if guardianship is necessary.

Supported decision making has been described as occurring when an individual with cognitive challenges is the ultimate decision maker but is provided support from one or more persons who explain issues to the individual and, where necessary, interpret the individual's words and behavior to determine his or her goals and preferences.

Every guardianship should be focused on the person and grounded in demonstrating respect for the dignity of all involved.

A guardian must understand and protect the rights of the person and utilize all the tools available to maximize the participation of the person and enable self-determination.

Five Ways Lawyers Can Become Industry Thought Leaders by Advising on Alternatives to Guardianship

It has become increasingly important for attorneys to learn about alternatives to guardianship in their scope of representation and practice model.

Consider these five (5) steps lawyers can take to become an industry leader on a practice that includes alternatives to guardianship.



AMERICAN BAR ASSOCIATION

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Law and Aging

Step 1: Become Educated on Existing Alternatives

- Attend State and/or ABA CLE on existing alternatives to guardianship, supported decision-making, etc.
- Attend conferences:
 - ABA Commission on Law and Aging's National Aging and Law Conference
 - National Guardianship Association (NGA)
- Visit online resources:
 - ABA Commission on Law and Aging resources and publications on Guardianship and Supported Decision-Making, Health Care Decision-Making, and Capacity Assessments
 - National Guardianship Network (NGN)
 - National Resource Center for Supported Decision-Making
 - U.S. Department of Justice Guardianship: Less Restrictive Options

Step 2: Add to Your Practice

Adding less-restrictive alternatives to guardianship to your practice is likely to put you ahead of your competition, while providing your clients with progressive options not offered by more traditional practitioners.

Consider adding and/or including the following to your practice:

- Identify and advise on integrated supports – both decision-making supports and day-to-day living supports – that would greatly reduce, if not eliminate, the need for guardianship.
- Identify and advise individuals, their family, and stakeholders on creating supported decision-making teams that can meet an individuals’ support needs without guardianship.

Step 3: Reduce Guardianship Case Filings

Consistent with the 4th National Guardianship Summit Recommendations (3.1), states and attorneys are encouraged to adopt and implement the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (Uniform Act).

By incorporating these principles into your practice and the drafting of less restrictive alternatives to guardianship, you will help reduce the number of guardianship cases in the courts.

Step 4: Host Educational Opportunities

- Provide CLE programs through your state or local bar for judges and attorneys
- Give presentations and/or webinars to doctors, nurses, bankers, teachers, social workers, and other stakeholders who may not believe that the person with a disability has “capacity” to make his own choice.
- Deliver community presentations at your local library, town hall, or other public gathering spaces to educate and advocate for alternatives to guardianship.
- Offer informal, one-on-one discussions with professional colleagues to help evolve traditional practices and educate others about best practices involving alternatives to guardianship.
- Update your webpage to include tools and resources on alternatives to guardianship.

Step 5: Ensure Justice for All

Do your part to help ensure liberty and justice for all.

- Educate yourself on “effective communication” requirements under Title II of the ADA.
- When a client’s capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client. (Model Rules of Prof’l Conduct Rule 1.14(a)).
- Make it a priority to develop, provide, and assist individuals with disabilities, older adults, and their caregivers with less restriction options and information that promote their wellness and continue to support their independence, their freedom of choice, their autonomy, and dignity.



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Thank You!

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